**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P.No 535 of 2002 (S/B)

Jai Shankar Prasad

VS

State of U.P. and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 09.5.2005

Initial of Judge

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**
**WRIT PETITION NO. 535 OF 2002**

Jai Shankar Prasad, S/o late Shri Banshidhar, resident of Village and Post Dhanapur, District Chandauli (U.P.), C/o Soil Conservation Officer, Kirtinagar Tehri Garhwal (Uttaranchal).

.....Petitioner.

Versus

1. State of U.P., through Secretary to the Government Agricultural Department, U.P. Govt. Lucknow.
2. State of Uttaranchal, through Secretary to the Government Agricultural Department Uttaranchal Govt., Dehradun.
3. Director Agriculture Uttar Pradesh, Lucknow.
4. Additional Director of Agriculture, Uttaranchal, Pauri Garhwal, Camp Office, Dehradun.
5. Soil Conservation Officer, Kirtinagar, Tehri Garhwal (Uttaranchal).
6. Union of India, through Chairman State Advisory Committee, Gate No. 35, Jawahar Lal Nehru, Lodhi Road, New Delhi.

***Mr. S.K. Mandal, learned counsel for the petitioner.***
***Learned standing counsel.***
***Sri S.P.S. Pawar, learned Standing Counsel for the State of U.P.***

**Hon'ble Rajesh Tandon, J.**

By the present writ petition the petitioner has prayed for quashing the Government Communication letter no. 847 dated 11.12.2001 issued by Soil Conservation Officer, Kirtinagar Tehri Garhwal respondent no. 5.

Briefly stated, in pursuance of the advertisement published in ***"Daily Aaj"*** dated 5th September, 1982 inviting applications for appointment for Subordinate Agriculture Service Group III, the petitioner being eligible for the appointment applied through registered post.

However, further in pursuance of the Government Order dated 17th July, 1991, the respondent no. 1 restricted the

appointment against the post, which fell within the purview of U.P. Public Service Commission, which were to be made on the basis of the orders of the Hon'ble High Court. Even then the agriculture and extension diploma holders were appointed, in compliance where of the petitioner also submitted his joining report before the Deputy Director of Agriculture (Soil Conservation).

The respondent no. 3 appointed 165 diploma holders of 1980 vide letter No. AC-1590/G-1/U.P. dated 08.07.1991 against the vacancy published on 29.04.1981, in which the petitioner's name was at Serial No. 143 and the petitioner was also appointed according to merit in the year, 1991.

Petitioner has submitted that he has made various representations stating therein that he is not an employee of Hill Sub Cadre but he has been informed by the Soil Conservation Officer vide his letter dated 11th December, 2001 that he has been finally allocated to the Uttaranchal State. Petitioner has challenged that the allotment of the petitioner to the Uttaranchal State is wholly illegal in as much as he was never an employee of the Hill Sub Cadre.

Petitioner has further submitted that in view of the Re-organization Act, the representation has to be decided by the Central Advisory Committee as contained under Section 73 of the U.P. Organization Act. Section 73 (1) (2) and (3) read as under:-

*"Provisions relating to other services. –(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Uttar Pradesh unless he is required, by general or special order of*

*the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal.*

*Provided that every direction under this Sub-section issued after the expiry of a period of one year form the appointed day shall be issued with the consultation of the Government of the successor States.*

*(2) As soon as amy be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.*

*(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State, shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government."*

Section 76 of the Uttar Pradesh Reorganization Act reads as under:-

*"Advisory Committees-The Central government ma, by order, establish one or more Advisory Committees for the purpose of assisting it in regard to-*

*(a) the discharge of any of its function under this part; and*

*(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons."*

Section 77 of the Uttar Pradesh Reorganization Act provides as under:-

*"Power of Central Government to give directions-The Central Government may give, such directions to the State*

*Government of Uttar Pradesh and the State of Uttaranchal as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions."*

Learned counsel for the petitioner has also referred the judgment of the Writ Petition No. 451 of 2003, where similar directions have been issued. The same is quoted below:-

*"Under Section 73 of the U.P. Reorganization Act, 2000, final allocation of all State Services personnel between the successor States shall be decided by the Central Government. Till date, that decision has not been taken. Therefore, the petitioner is premature."*

A perusal of the order shows that the order has not been passed under the provisions of Section 73 or Section 76 of the U.P. Reorganization Act but it has been passed by the Authority namely Soil Conservation Officer, Kirtinagar, Tehri Garhwal.

In view of the aforesaid facts and circumstances, the order passed on 11th December, 201 is set aside and the petitioner is permitted to make a fresh representation to the Central Government in accordance with the provisions of Section 73 of the U.P. Reorganization Act. If such a representation is made within a period of three weeks from the filing of the certified copy of the order, the same shall be considered in accordance with the provisions of Section 73 of the Uttar Pradesh Reorganization Act after hearing the petitioner as directed in Writ Petition No. 390 of 2002 as well as Writ Petition No. 1271 of 2003.

Accordingly, Writ Petition is allowed. No order as to costs.

09.05.2005 (Rajesh Tandon, J.)
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